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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 170630613-8489-01]**

**RIN 0648-BH02**

**Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 116 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). If approved, Amendment 116 would limit access to the Bering Sea and Aleutian Islands (BSAI) Trawl Limited Access Sector (TLAS) yellowfin sole directed fishery by vessels that deliver their catch of yellowfin sole to motherships for processing. This proposed rule would establish eligibility criteria based on historical participation in the BSAI TLAS yellowfin sole directed fishery, issue an endorsement to those groundfish License Limitation Program (LLP) licenses that meet the eligibility criteria, and authorize delivery of BSAI TLAS yellowfin sole to motherships by only those vessels designated on a groundfish LLP license that is endorsed for the BSAI TLAS yellowfin sole directed fishery.

This proposed action is necessary to prevent increased catcher vessel participation

from reducing the benefits the fishery provides to historic and recent participants, mitigate the risk that a “race for fish” could develop, and help to maintain the consistently low rates of halibut bycatch in the BSAI TLAS yellowfin sole directed fishery. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, Amendment 116, the BSAI FMP, and other applicable laws.

**DATES:** Submit comments on or before [*INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2017-0083, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2017-0083*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly

accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 116 and the draft Environmental Assessment/Regulatory Impact Review prepared for this action (collectively the “Analysis”) may be obtained from *www.regulations.gov*. Electronic copies of Amendments 80 and 39 to the BSAI FMP, and the Environmental Assessments/Regulatory Impact Reviews prepared for those actions also may be obtained from *www.regulations.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; and by e-mail to *OIRA\_Submission@omb.eop.gov* or by fax to (202)–395–5806.

**FOR FURTHER INFORMATION CONTACT:** Bridget Mansfield, 907-586-7228 or *bridget.mansfield@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority for Action**

NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared the BSAI FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI FMP appear at 50 CFR parts 600 and 679.

This proposed rule would implement Amendment 116 to the BSAI FMP. The

Council submitted Amendment 116 for review by the Secretary of Commerce (Secretary), and a Notice of Availability (NOA) of Amendment 116 was published in the *Federal Register* on May 18, 2018, with comments invited through July 17, 2018. Comments submitted on this proposed rule by the end of the comment period (See DATES) will be considered by NMFS and addressed in the response to comments in the final rule. Comments submitted on this proposed rule may address Amendment 116 or this proposed rule. However, all comments addressing Amendment 116 must be received by July 17, 2018, to be considered in the approval/disapproval decision on Amendment 116. Commenters do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by July 17, 2018, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered by NMFS in the approval/disapproval decision for Amendment 116 and addressed in the response to comments in the final rule.

## **Background**

In June 2017, the Council adopted Amendment 116. If approved by the Secretary, Amendment 116 would require that a vessel be designated on a groundfish LLP license with a BSAI TLAS yellowfin sole directed fishery endorsement for that vessel to be used to harvest yellowfin sole in the BSAI TLAS yellowfin sole directed fishery and deliver that catch to a mothership. The terms “directed fishery” and “mothership” are defined at 50 CFR 679.2. A groundfish LLP license would be eligible for such an endorsement if it is credited with at least one qualifying landing, where the term “qualifying landing” would be defined under this proposed rule as a legal trip target landing in the BSAI TLAS yellowfin sole directed fishery made to a mothership in any

one year from 2008 through 2015. Under this proposed rule, the term “trip target” would be defined as a groundfish species that is retained in an amount greater than the retained amount of any other groundfish species for that trip. For those vessels used to make a qualifying landing, only one groundfish LLP license on which the vessel was designated during the qualifying period would be eligible to receive the endorsement under this proposed rule. If a vessel that made at least one legal trip target landing in the BSAI TLAS yellowfin sole directed fishery from 2008 through 2015 (qualifying period) was designated on more than one groundfish LLP license during the qualifying period, the vessel owner would be required to select one groundfish LLP license that would receive credit for the qualifying landing(s) and receive a BSAI TLAS yellowfin sole directed fishery endorsement.

The following sections of this preamble provide a description of 1) the LLP, the BSAI TLAS yellowfin sole directed fishery, and related management programs; 2) the need for this proposed rule; and 3) the proposed eligibility criteria and process for obtaining new endorsements authorizing delivery of BSAI TLAS yellowfin sole directed fishery catch to motherships.

### **Description of the License Limitation Program, the BSAI TLAS Yellowfin Sole Directed Fishery, and Related Management Programs**

#### *License Limitation Program*

The Council and NMFS have long sought to control the amount of fishing effort in the BSAI groundfish fisheries to ensure that the fisheries are conservatively managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS to control fishing effort is the LLP, which limits access to the

groundfish fisheries in the BSAI. With some limited exceptions, the LLP requires that persons hold and designate on a groundfish LLP license each vessel that is used to fish in Federally managed groundfish fisheries. The LLP is intended to prevent unlimited entry into groundfish fisheries managed under the BSAI FMP.

The LLP for BSAI groundfish fisheries was recommended by the Council as Amendment 39 to the BSAI FMP. The Council adopted the LLP for BSAI groundfish in June 1995, and NMFS approved Amendment 39 on September 12, 1997. NMFS published the final rule to implement the LLP on October 1, 1998 (63 FR 52642), and fishing under the LLP began on January 1, 2000. The preamble to the final rule implementing the BSAI groundfish LLP and the EA/RIR/IRFA prepared for that action describe the rationale and specific provisions of the LLP in greater detail (see **ADDRESSES**) and are not repeated here.

The key components of the LLP are briefly summarized as follows. The BSAI groundfish LLP established specific criteria that must be met to allow a vessel to receive a groundfish LLP license and continue to be eligible to fish in directed groundfish fisheries managed under the BSAI FMP. Vessels under 32 feet length overall (LOA) in the BSAI, and vessels using jig gear in the BSAI that are less than 60 feet LOA and that deploy no more than five jigging machines are exempt from the requirements to have a groundfish LLP license.

Under the LLP, NMFS issued licenses that 1) endorse fishing activities in specific regulatory areas in the BSAI; 2) restrict the length of the vessel on which the LLP license may be used; 3) designate the fishing gear that may be used on the vessel (*i.e.*, trawl or non-trawl gear designations); and 4) designate the type of vessel operation permitted (*i.e.*,

specify whether the vessel designated on the LLP license may operate as a catcher vessel or as a catcher/processor). LLP licenses are issued so that the endorsements for specific regulatory areas, gear designations, and vessel operational types are non-severable from the LLP license (*i.e.*, once issued, the components of the LLP license cannot be transferred independently). By creating LLP licenses with these characteristics, the Council and NMFS limited the ability of a person to use an assigned LLP license--which was derived from the historic fishing activity in one area with a specific fishing gear or operational type--in other areas, with other gears, or for other operational types. The Council's intent of such limitation was to curtail the ability of the LLP license holder to expand fishing capacity, which could decrease the benefits derived by the existing participants from those other fisheries. The preamble to the final rule implementing the BSAI groundfish LLP provides a more detailed explanation of the rationale for specific provisions in the LLP (63 FR 52642, October 1, 1998).

In order to receive a BSAI groundfish LLP license, a vessel owner had to meet minimum landing requirements with the vessel during a specific time frame. Specifically relevant to this proposed rule, a vessel owner received a BSAI groundfish LLP license endorsed for a specific regulatory area in the BSAI (the Bering Sea (BS), the Aleutian Islands (AI), or both) if that vessel met specific harvesting and landing requirements for that specific regulatory area during the qualifying periods established in the final rule implementing the LLP (63 FR 52642, October 1, 1998). NMFS issued groundfish LLP licenses with a catcher vessel (CV) operation type if a vessel caught but did not process its catch at-sea during the specific qualifying periods; and NMFS issued groundfish LLP licenses with a catcher/processor (CP) endorsement if a vessel caught and processed its

own catch at-sea during the specific qualifying periods (63 FR 52642, October 1, 1998). As an example, in order to receive a groundfish LLP endorsed for trawl gear in the AI with a CP designation, a vessel must have met the minimum groundfish harvesting and landing requirements for the AI using trawl gear during the qualifying period, and must have processed the qualifying catch on board the vessel.

*BSAI TLAS Yellowfin Sole Directed Fishery and Amendment 80*

The yellowfin sole (*Limanda aspera*) is one of the most abundant flatfish species in the eastern Bering Sea and is the target of the largest flatfish fishery in the United States. They inhabit the eastern Bering Sea shelf and are considered one stock.

Abundance in the Aleutian Islands region is negligible. The BSAI yellowfin sole directed fishery was historically managed under a total allowable catch (TAC) limit that could be harvested by eligible vessels. In 1998, regulations allocated a portion of the TAC to the Community Development Quota (CDQ) Program (63 FR 8356, February 19, 1998). The allocation of the BSAI yellowfin sole TAC was further modified in the late 2000s when the Council recommended and NMFS approved and implemented Amendment 80 to the BSAI FMP (72 FR 52668, September 14, 2007).

Along with other measures, Amendment 80 allocated six BSAI non-pollock groundfish species among two trawl fishery sectors. The six species, known as “Amendment 80 species,” include Aleutian Islands Pacific ocean perch, BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. These species are allocated for harvest between the Amendment 80 sector, comprised of specific vessels identified under Amendment 80, and all other BSAI trawl fishery participants not in the Amendment 80 sector. The other BSAI trawl fishery



participants include American Fisheries Act (AFA) CPs, AFA CVs, and non-AFA CVs. Collectively, this group of other, or non-Amendment 80, trawl fishery participants comprises the BSAI TLAS. The BSAI TLAS is defined at 50 CFR 679.2. The BSAI TLAS fisheries are conducted in the BSAI using trawl gear, using non-Amendment 80 vessels designated on a non-Amendment 80 LLP license, and do not include CDQ groundfish fisheries or fishing for CDQ groundfish.

Each year, NMFS allocates the initial total allowable catch (ITAC) of the six Amendment 80 species, as well as crab and halibut prohibited species catch (PSC) limits, between the Amendment 80 sector and the BSAI TLAS. Allocations made to the Amendment 80 sector are exclusive to the Amendment 80 sector and not subject to harvest in other fishery sectors. The Amendment 80 sector is precluded from harvesting Amendment 80 species allocated to the BSAI TLAS. The Council's intent in establishing the BSAI TLAS was to provide harvesting opportunities for AFA CPs, AFA CVs, and non-AFA CVs.

The ITAC represents the amount of TAC for each Amendment 80 species that is available for harvest after allocations to the CDQ program and the incidental catch allowance (ICA) have been subtracted. The ICA is an amount set aside for the incidental harvest of each Amendment 80 species by non-Amendment 80 vessels targeting other groundfish species in non-trawl fisheries and in the BSAI TLAS fisheries. The annual proportion of yellowfin sole ITAC allocated to the Amendment 80 sector and the BSAI TLAS depends on the amount at which the yellowfin sole ITAC is set. As the amount of ITAC for BSAI yellowfin sole increases, the proportion of the ITAC assigned to the BSAI TLAS also increases.

To further accommodate yellowfin sole harvest opportunities for the BSAI TLAS, the Amendment 80 Program relieves AFA sideboard limits for yellowfin sole when the yellowfin sole ITAC is equal to or greater than 125,000 metric tons (mt). The lifting of AFA sideboard limits for yellowfin sole allows AFA vessels to increase their yellowfin sole TLAS harvest, particularly in periods of reduced availability of pollock.

Implementation of the AFA included the establishment of harvesting and processing limits, known as sideboards, to protect vessels and processors in other, non-pollock fisheries from spillover effects resulting from the rationalization and privatization of the BSAI pollock fishery. The need for AFA sideboard limits for yellowfin sole was reduced with Amendment 80, because most of the yellowfin sole ITAC is allocated to the Amendment 80 sector for exclusive harvest, and AFA vessels no longer directly compete with the Amendment 80 sector for yellowfin sole. Since 2008, the yellowfin sole ITAC has been higher than 125,000 mt, so yellowfin sole sideboard limits have not been in place for AFA vessels since implementation of Amendment 80. Additional detail on the rationale for the specific allocations in the BSAI TLAS yellowfin sole fishery, and the management of AFA sideboards is provided in the final rule implementing Amendment 80 (72 FR 52668, September 14, 2007).

Although the Council was clear in its intent to prohibit Amendment 80 vessels from harvesting Amendment 80 species allocated to the BSAI TLAS, the Council did not specifically address during its development of Amendment 80 whether Amendment 80 vessels should be eligible to serve as processing platforms for the BSAI TLAS sector. A vessel that receives and processes groundfish from other vessels is referred to as a “mothership” (see definition at 50 CFR 679.2). Although Amendment 80 vessels operate

as CPs in the Amendment 80 sector (*i.e.*, the vessels catch and process their own catch), Amendment 80 vessels meet the regulatory definition of a mothership when they receive and process catch from catcher vessels fishing in the BSAI TLAS fisheries.

The final rule implementing Amendment 80 clarified that Amendment 80 vessels could be used as motherships for catcher vessels fishing in the BSAI TLAS fisheries, based on public comments received on the proposed rule to implement Amendment 80, further analysis by NMFS, and the lack of clearly stated Council intent to the contrary. The final rule implementing Amendment 80 modified the proposed regulations to permit this activity, noted that this revision accommodated one Amendment 80 vessel that had historically been used as a mothership, and acknowledged that the revision provided for potential future growth in the use of Amendment 80 vessels as motherships in the BSAI TLAS. A detailed description of the Council's intent and NMFS' actions regarding limitations of Amendment 80 vessels catching, receiving, and processing fish assigned to the BSAI TLAS is provided in the proposed rule (72 FR 30052, May 30, 2007) and in the final rule implementing Amendment 80 (72 FR 52668, September 14, 2007).

#### *Increased Participation in the Offshore BSAI TLAS Yellowfin Sole Directed Fishery*

The current BSAI TLAS yellowfin sole directed fishery is almost entirely an offshore fishery composed of two primary groups: 1) AFA CPs, and 2) AFA and non-AFA CVs delivering yellowfin sole to AFA and Amendment 80 CPs operating as motherships. Section 2.7.1.1 of the Analysis considered by the Council for this action noted that two stationary floating processors participated in the fishery as motherships prior to 2009. Although those processors did not participate in the fishery after 2008, data from landings to those vessels were included in the analysis of impacts of the

alternatives. For purposes of this proposed rule a stationary floating processor is considered a mothership. In this preamble, NMFS uses the term “offshore sector” when referring to vessels that are harvesting BSAI TLAS yellowfin sole and either delivering that catch to motherships for processing or processing their own catch. AFA CPs participate in the offshore sector by 1) catching and processing yellowfin sole (*i.e.*, operating as a CP); 2) receiving and processing deliveries of yellowfin sole from CVs (*i.e.*, operating as a mothership); or 3) catching and delivering their harvest to other CPs operating as motherships for processing (*i.e.*, operating as a CV). No AFA CPs have operated solely as motherships (*i.e.*, vessels that do not harvest fish and only receive catch for processing) in the BSAI TLAS yellowfin sole directed fishery since it began in 2008.

The BSAI TLAS yellowfin sole TAC was not fully harvested during the first five years of the fishery (2008 through 2012) due to limited fishing effort combined with high allocations. During this five-year period, harvests ranged from a low of 31 percent of the TAC in 2009 to a high of 87 percent of the TAC in 2010. Since 2013, the BSAI TLAS yellowfin sole TAC has been more fully harvested with at least 93 percent of the TAC harvested in each year (Section 2.6.1.2 of the Analysis).

Since implementation of the BSAI TLAS yellowfin sole directed fishery in 2008, the number of AFA CPs actively fishing and processing has ranged from 8 to 12 vessels. Until 2015, AFA CPs harvested about 85 percent of the total catch in the BSAI TLAS yellowfin sole directed fishery. However, the percentage of total catch harvested by AFA CPs has diminished each year since 2015, and comprised approximately 42 percent of the total harvest in 2017. Harvest patterns of AFA CPs also have changed since the inception

of the fishery. From 2008 to 2010, participating AFA CPs fished from January 20<sup>th</sup> through February and occasionally into March or April each year. Starting in 2011, prosecution of the fishery by AFA CPs developed into two distinct fishing patterns. The first pattern consists of most participating AFA CPs fishing for only two weeks beginning January 20<sup>th</sup> each year. The second pattern generally consists of two AFA CPs fishing all year. Section 2.7.1.1 of the Analysis provides additional detail on the participation and harvesting patterns in the BSAI TLAS yellowfin sole fishery.

From 2008 through 2014, the annual number of AFA and non-AFA CVs participating in the BSAI TLAS yellowfin sole offshore sector ranged from zero to three vessels. The annual number of participating CVs increased to six in 2015 and to nine in 2016. In 2017, eight CVs participated in the fishery, with one CV being a new entrant to the fishery. The CV share of the total BSAI TLAS yellowfin sole directed fishery harvest rose from an average of 17 percent each year from 2008 through 2014 to 45 percent in 2015, 48 percent in 2016, and 58 percent in 2017 (Section 2.7.1.1 of the Analysis).

Harvest patterns for CVs in the BSAI TLAS yellowfin sole directed fishery have also changed over time. In 2008, participating CVs fished BSAI TLAS yellowfin sole from March until December. After the first year of the fishery, CVs fished BSAI TLAS yellowfin sole in April, September, and October. Starting in 2012, CVs fished BSAI TLAS yellowfin sole until the season ended or NMFS closed the fishery to directed fishing. From 2012 through 2015, this meant that CVs fished in the BSAI TLAS yellowfin sole directed fishery throughout most of the year. However, in 2016 and 2017, the fishing season was significantly shortened, with NMFS closing the fishery in June and May, respectively, due to the TAC being reached. Section 2.7.1.1 of the Analysis

provides additional detail on the participation and harvesting patterns in the BSAI TLAS yellowfin sole fishery.

CPs operating as motherships take deliveries of harvested BSAI TLAS yellowfin sole from CVs and CPs acting as CVs for at-sea processing. Only one Amendment 80 CP acting as a mothership participated in the fishery from 2008 through 2014. From 2015 through 2017, the number of CPs operating as motherships and receiving catch from CVs expanded to seven vessels. In 2017, six Amendment 80 CPs and one AFA CP operated as motherships for CVs in the BSAI TLAS yellowfin sole directed fishery. The increased use of Amendment 80 vessels operating as motherships has increased opportunities for CV deliveries. This increased opportunity is demonstrated by the increased number of CVs that participated in 2015 through 2017, and the higher proportion of BSAI TLAS yellowfin sole catch that was harvested by CVs in 2015 through 2017 relative to previous years. Section 2.7.1.1 of the Analysis provides additional detail on the factors affecting mothership patterns in the BSAI TLAS yellowfin sole fishery.

The potential exists for additional motherships and CVs to participate in the BSAI TLAS yellowfin sole directed fishery. Section 2.7.1.1 of the Analysis estimates that up to seven additional Amendment 80 CPs could enter the BSAI TLAS yellowfin sole offshore sector as motherships based on a range of factors described in the Analysis. These motherships could provide processing capacity for up to 21 additional CVs. These estimates likely represent the maximum potential expansion of capacity in the BSAI TLAS yellowfin sole directed fishery. Section 2.7.1.1 of the Analysis provides additional detail on the potential for new motherships and CVs to enter the BSAI TLAS yellowfin sole fishery.

### *Halibut Bycatch in the BSAI TLAS Yellowfin Sole Directed Fishery*

NMFS monitors the bycatch of halibut in the BSAI TLAS yellowfin sole directed fishery against the halibut PSC limits established for the fishery, and will close or otherwise restrict trawl harvests of BSAI TLAS yellowfin sole if halibut PSC limits are projected to be reached. Fishery closures due to reaching halibut PSC limits can occur before the BSAI TLAS yellowfin sole TAC is fully harvested, thereby reducing overall revenue to vessel operators and crew. To avoid this outcome, vessel operators may accelerate fishing operations to maximize harvest of yellowfin sole before the halibut PSC limit is reached.

The halibut PSC limit for the BSAI TLAS yellowfin sole directed fishery ranged between 162 to 241 mt from 2008 through 2014, with the halibut PSC limit being exceeded in 2013 by 18 mt. In 2014, 60 mt of halibut PSC was reapportioned from the BSAI TLAS Pacific cod fishery to the BSAI TLAS yellowfin sole fishery to allow the fishery to remain open for the rest of the year for participants to harvest the remaining BSAI TLAS yellowfin sole TAC. From 2015 through 2017, the halibut PSC limit was between 150 to 167 mt, but it was not reached in any of these years before the fishery closed when the BSAI TLAS yellowfin sole TAC was fully harvested. Halibut mortality rates for the BSAI TLAS yellowfin sole directed fishery for 2008 through 2017 ranged from 1.11 to 6.55 kg halibut per mt groundfish, with a generally increasing trend from 2010 through 2016, followed by a drop in 2017.

### **Need for Action**

Given the recent and dramatic increases in CV and mothership participation that have occurred in the BSAI TLAS yellowfin sole directed fishery and the expectation of additional capacity entering the fishery, the Council identified three management and

conservation concerns that it wanted to address with Amendment 116: 1) the likelihood of decreasing benefits from the fishery for long-time, historic, and recent participants given the increasing number of participants in the fishery and shorter fishing seasons; 2) an increased risk of a race for fish; and 3) the potential for higher halibut bycatch. The Council noted the increase in the number of participating CVs combined with recent lower BSAI TLAS yellowfin sole allocations was resulting in a fully utilized fishery with increasingly shorter fishing seasons. Shorter fishing seasons can be more difficult for NMFS to manage catch within established limits and increase the incentives for vessels to harvest quickly in order to harvest a greater share of the TAC before it is fully harvested and the fishery is closed. This “race for fish” may result in fishing with less care and the potential for increased halibut PSC rates which could lead to closure of the fishery before the TAC is fully harvested. Public testimony to the Council included concerns that the shorter fishing season was having a negative effect on access to the fishery by CVs that participated in the fishery prior to 2015.

In order to address these concerns, the Council determined that management measures are needed that would limit access to the BSAI TLAS yellowfin sole directed fishery by vessels harvesting BSAI TLAS yellowfin sole and delivering their catch to a mothership for processing. Specifically, the Council recommended as its preferred alternative for Amendment 116 that a vessel would be eligible to participate in the BSAI TLAS yellowfin sole directed fishery and deliver its catch to a mothership only if that vessel was designated on a groundfish LLP license that has been credited with at least one trip target landing in the BSAI TLAS yellowfin sole directed fishery made to a mothership or catcher/processor in any one year from 2008 through 2015. The Council



recognized that this eligibility criterion may qualify more groundfish LLP licenses than vessels with a qualifying landing, because some vessels with a qualifying landing may have been designated on more than one groundfish LLP license during the qualifying period. Therefore, the Council also recommended that if a vessel with a qualifying landing was designated on more than one groundfish LLP license during the qualifying period, only those groundfish LLP licenses on which the vessel was designated, when the vessel was used to make at least one trip target landing in a BSAI TLAS fishery from 2008 through 2015, would be eligible to be credited with a qualifying landing. In such cases, the vessel owner would be required to select one of these eligible groundfish LLP licenses to receive credit with the qualifying landings. Under the proposed rule, groundfish LLP licenses that meet the eligibility criteria and are credited with a qualifying landing would receive from NMFS a groundfish LLP endorsement that would authorize participation in the offshore BSAI TLAS yellowfin sole directed fishery. Vessels not designated on groundfish LLP licenses that receive the endorsement would be prohibited from participating in the BSAI TLAS yellowfin sole directed fishery and delivering their catch to a mothership for processing.

The Council determined and NMFS agrees that limiting CV access to the offshore BSAI TLAS yellowfin sole directed fishery is necessary to ease the likelihood of increased harvesting pressure and the shortening of the fishing season, mitigate the risk that a “race for fish” could continue to develop and accelerate, and help to maintain the consistently low rates of halibut bycatch in the BSAI TLAS yellowfin sole directed fishery. The Council also determined, and NMFS agrees, that this proposed rule would reasonably balance the need to limit additional future and very recent speculative entry to

the BSAI TLAS yellowfin sole directed fishery to help control the pace of fishing with the need to provide continued access and benefits to historic, long time and more recent participants.

The Council determined and NMFS agrees that the proposed action would likely prevent the fishing season from shortening further because it removes the ability for additional capacity to enter the fishery and harvest the TAC or reach halibut PSC limits more quickly. As described in Section 2.7.1.2 of the Analysis, the fishing seasons in 2016 and 2017 were the shortest on record for this fishery at the time of the highest levels of CV participation and with CVs harvesting the highest proportion of the fishery's TAC. The pace of fishing during those fishing seasons may have increased due to additional speculative entry and concerns by ongoing participants about the increasing competition. This proposed rule could help lengthen the fishing season and mitigate a "race for fish" by limiting the eligible groundfish LLP licenses, such that participation is generally representative of the 2015 fishing year, when the season lasted until late in the year. This proposed rule also could help lengthen the fishing season and mitigate a "race for fish" by allowing eligible CVs more flexibility in fishing operations through predictable levels of competition. That flexibility may help improve fishing efficiency and reduce halibut PSC in the fishery by allowing vessels to take steps to reduce halibut PSC, such as leaving or avoiding areas of high halibut concentration. At a minimum, the proposed action is expected to minimize further negative impact on the resources that could occur if CV participation in the fishery were maintained at 2016 levels or allowed to continue to increase. The proposed action may also help to facilitate voluntary best practices agreements between CVs and AFA CPs in the BSAI TLAS yellowfin sole directed

fishery to avoid halibut PSC. The Council also considered whether this proposed action could have adverse impacts on other fisheries, specifically the BSAI TLAS Pacific cod fishery, if CVs or motherships were displaced from participation in the BSAI TLAS yellowfin sole fishery. As described in Section 2.7.2.1 of the Analysis and later in this preamble, the Council concluded, and NMFS agrees, that such adverse impacts are not likely.

Under the LLP, a license can be transferred to a different vessel that is eligible to be designated on that LLP license, but only one vessel can be designated on an LLP license at any given time. Additionally, a vessel may be designated on more than one LLP license at one time. Therefore, the number of eligible groundfish LLP licenses presented in this proposed rule and the Analysis represents the maximum number of CVs that NMFS currently has determined would be eligible to conduct directed fishing for BSAI TLAS yellowfin sole. If Amendment 116 is approved and this proposed rule is finalized, fewer and/or different CVs designated on groundfish LLP licenses with a BSAI TLAS yellowfin sole directed fishery endorsement may be used to conduct directed fishing for BSAI TLAS yellowfin sole and deliver the catch to a mothership. The Analysis uses the current groundfish LLP license vessel designations to describe the likely impacts of the proposed action, because it is not possible to know how the vessel designations on groundfish LLP licenses may change in the future.

The Council considered a range of options that would qualify a groundfish LLP license for a BSAI TLAS yellowfin sole directed fishery endorsement, including: 1) how eligible landings would be determined; 2) the range of years during which eligible landings would need to be made (*i.e.*, qualifying period); 3) the number of years during

the qualifying period in which eligible landings would need to be made; and 4) whether the requirement for a BSAI TLAS yellowfin sole directed fishery endorsement would be removed under specific TAC conditions. In addition to other factors considered and addressed in the Analysis, the Council and NMFS considered the proposed action's consistency with allocations initially made under the Amendment 80 Program, its potential impacts on the BSAI TLAS Pacific cod fishery, and whether this proposed action would constitute a limited access privilege program as that term is defined under the Magnuson-Stevens Act. The following briefly summarizes these options and key considerations.

*Why are qualifying landings based on trip target rather than directed fishing?*

At its February 2017 meeting, the Council clarified that eligibility criteria should be based on trip target landings rather than directed fishing landings. Directed fishing is defined as any fishing activity that results in retention of an amount of a species on board a vessel that is greater than the maximum retainable amount for that species (see definition at 50 CFR 679.2). Under this definition, a vessel may be targeting and retaining Pacific cod but also retaining incidentally caught yellowfin sole at an amount that exceeds the maximum retainable amount for yellowfin sole. NMFS would consider the vessel to be directed fishing for Pacific cod and directed fishing for yellowfin sole in such a situation. Thus, limiting access to the BSAI TLAS yellowfin sole directed fishery based on a history of directed fishing activity could result in CVs meeting minimum landings requirements based on incidental catch of yellowfin sole.

Under this proposed rule, "trip target" would be defined as a landing in which the amount of retained BSAI TLAS yellowfin sole is greater than the retained amount of any

other groundfish species for that trip. The Council's intent with this action is to provide endorsements to those CVs that were intentionally targeting yellowfin sole in the BSAI TLAS yellowfin sole directed fishery and not to provide endorsements to CVs that were intentionally targeting other groundfish species but retaining their incidental catch of yellowfin sole. Using trip target to determine eligibility would limit the potential for a vessel to qualify for participation in the BSAI TLAS yellowfin sole directed fishery based on the vessel's incidental catch of yellowfin sole. This is consistent with previous eligibility criteria for limiting access to some fisheries based on trip target, rather than directed fishing activity. In the case of this proposed action, the use of trip target to establish qualification for the BSAI TLAS yellowfin sole directed fishery endorsement would result in the same number of LLP licenses qualifying for the BSAI TLAS yellowfin sole directed fishery endorsement as there were CVs that participated in the fishery for any one year during the proposed qualifying period.

*Why was the range of qualifying years selected?*

The Council considered two ranges of years for determining qualifying landings; 2008 through 2015 and 2008 through 2016. The Council selected 2008 as the start of both qualifying periods because 2008 was the first year of the BSAI TLAS yellowfin sole directed fishery. The Council ended one qualifying period with 2015, because 2015 is the year the Council initiated the analysis for Amendment 116 and the last year of participation in the fishery prior to the Council's announced control date of October 13, 2015. The Council ended the other qualifying period with 2016 to allow consideration of the most recent participants based on public testimony. In determining the two options for a qualifying period, the Council also took into consideration participation in the fishery

prior to 2008 and during 2017. The Council selected 2008 through 2015 as its preferred qualifying period for eligibility for a BSAI TLAS yellowfin sole directed fishery endorsement. In selecting the 2008 through 2015 period, the Council considered the potential for future entry of capacity into the fishery, while also recognizing existing participation.

Under the 2008 through 2015 qualifying period that had at least one qualifying landing made in any one year during the period, the Analysis indicates that a total of eight LLP licenses would be eligible to receive a BSAI TLAS yellowfin sole directed fishery endorsement. Under the 2008 through 2016 qualifying period with at least one qualifying landing made in any one year during the period, ten LLP licenses would be eligible to receive a BSAI TLAS yellowfin sole directed fishery endorsement. The Council was aware of the potential for additional effort to enter the BSAI TLAS yellowfin sole directed fishery while the Council considered Amendment 116, and was aware that additional or speculative effort could enter the fishery to establish some history in it, which could impact existing participants in the fishery by further shortening the fishing season and increasing the “race for fish” (see Section 2.7.1.1 of the Analysis for a description of fishing patterns and seasons).

To dampen the effect of additional or speculative entry into the BSAI TLAS yellowfin sole directed fishery, the Council adopted a control date of October 13, 2015, which was published by NMFS in the *Federal Register* (80 FR 72408, November 19, 2015). Although control dates are not binding on future Council actions, the Council clearly indicated when it adopted the control date that this control date could be used to limit “future access to the offshore sector of the BSAI TLAS for yellowfin sole.” The

Council also clearly noted that the control date was intended to “promote awareness that the Council may develop a future management action,” and “to provide notice to the public that any current or future access to the offshore sector of the BSAI trawl limited access fishery for yellowfin sole may be affected or restricted; and to discourage speculative participation and behavior in the fishery while the Council considers whether to initiate a management action to further limit access to the fishery.” The selection of the 2008 through 2015 qualifying period is consistent with the Council’s clearly stated policy objectives and the public was clearly noticed that catch in 2016 may not be considered.

After the Council established the control date in 2015, the number of participating CVs increased from six in 2015 to nine in 2016, which is triple the maximum level of CV participation from 2008 through 2014 and nearly four times the average level of CV participation from 2008 through 2014. It is also a 33 percent increase over CV participation in 2015. Because the Council identified in 2015 the recent increase in CVs participating in the fishery to be the primary cause of shortened fishing seasons and the resulting “race for fish,” the Council was concerned that the even greater increase in CV participation after 2015 would further shorten the fishing season, increasing the risk of a “race for fish.” The Council considered, but rejected, ending the qualifying period in either 2016 or 2017, because the pace of fishing and harvest pressure increased in those years concurrent with the trend of increasing CV participation, including two vessels that participated in 2016 and another in 2017 that had never before been used to participate in the fishery. Those factors caused the fishery to close in June in 2016 and in May in 2017, compared to the November closure in 2015, which was more typical of previous season

lengths. Based on the same factors, NMFS also determined that the 2008-2015 qualifying period best addresses the need to reduce fishing pressure and help to control the pace of fishing within the fishery.

*Why select only one year, not two years, of participation?*

In conjunction with its determination that 2008 through 2015 was the appropriate qualifying period, the Council also determined that that qualifying period coupled with one year for participation would result in an adequate number of qualifying groundfish LLP licenses and CVs to prosecute the offshore fishery at a pace similar to the pace of the fishery through 2015. The Council considered two options addressing the frequency of qualifying landings in the BSAI TLAS yellowfin sole directed fishery during the qualifying period. One option would have required qualifying landings to be made in any two years during the qualifying period. The other option would require qualifying landings to be made in any one year during the qualifying period. The one year option would limit the number of CVs in the offshore BSAI TLAS yellowfin sole directed fishery to eight. While this option would allow two more CVs to participate than participated in 2015, it would still allow the fishery to be fully prosecuted without the risk of continued increase in harvest pressure that could continue to shorten the fishing season or increase Pacific halibut PSC rates. The Council did not choose the two-year requirement, because under both qualifying periods it would have substantially limited participation in a manner that is not reflective of the current harvest patterns in the fishery. Specifically, the two-year option would have limited the number of CVs in the offshore BSAI TLAS yellowfin sole directed fishery to three CVs owned by one company, which raised some concerns about its consistency with National Standard 4.



Further, this option would have excluded at least one historic participant under both qualifying periods, which would not be consistent with the Council's intent to provide continued access and benefits to historic participants. In addition, a more restrictive option is not needed to promote conservation. The Council determined, and NMFS agrees, that requiring a qualifying landing in any one qualifying year during the qualifying period of 2008 through 2015 effectively limits the potential for an increasingly challenging "race for fish" and the recent growth in the CV sector.

*Why are no options needed for new CV entrants during periods of high BSAI TLAS yellowfin sole allocation?*

The Council considered a range of options that would have removed the requirements for CVs to have a BSAI TLAS yellowfin sole directed fishery endorsement to deliver to the offshore sector if the TAC allocated to the BSAI TLAS yellowfin sole fishery was above specific amounts (see Sections 2.7.2.2 and 2.7.2.3 of the Analysis). However, the Council concluded, and NMFS agrees, that options that would provide for new CV entrants during periods of high BSAI TLAS yellowfin sole allocations are not needed or appropriate. Sections 2.7.2.2 and 2.7.2.3 of the Analysis note that CVs were able to enter the offshore BSAI TLAS yellowfin sole directed fishery from 2008 through 2015 under a wide range of TACs and market conditions, and those CVs that participated in the fishery during that time period would receive endorsements under this proposed rule.

The Council also determined and NMFS agrees that relieving the limit to entry into the offshore BSAI TLAS yellowfin sole directed fishery by CVs could exacerbate the conditions that could lead to a "race for fish" and could increase halibut PSC

mortality rates in the fishery. Further, an option for new entrants could create difficulties during the annual TAC setting process, as eligible CVs and new CV entrants negotiate a BSAI yellowfin sole TAC recommendation to the Council each year. This would complicate the determination of whether there would be a directed fishery for new CV entrants each year. The Council also considered the potential for participation in the offshore BSAI TLAS yellowfin sole directed fishery by CVs currently active in the Gulf of Alaska, but without recent participation in the BSAI TLAS yellowfin sole fishery. However, the Council determined that it is not necessary to provide fishing opportunities for these CVs in the BSAI TLAS yellowfin sole fishery, because these CVs have extensive flatfish resources in the GOA that have remained unharvested. NMFS agrees with the Council's finding. Therefore, no such provision is included in this proposed action.

*Why change the BSAI TLAS yellowfin sole policy as implemented under the Amendment 80 Program?*

As explained earlier, the Council and NMFS recognized at the time Amendment 80 was implemented that participation by Amendment 80 vessels as motherships in the offshore BSAI TLAS yellowfin sole directed fishery could continue or even increase. However, the proportion of the BSAI TLAS yellowfin sole directed fishery catch now being harvested by CVs that deliver their catch to Amendment 80 vessels operating as motherships is substantially greater than it was at the time the Amendment 80 Program was implemented. The final rule for the Amendment 80 Program (72 FR 52668, September 14, 2007) notes that only 1 Amendment 80 vessel was receiving and processing catch delivered from one CV in the BSAI Pacific cod fishery prior to the

implementation of the Amendment 80 Program. No Amendment 80 vessel was receiving catch from CVs participating in the BSAI yellowfin sole fishery at the time the Amendment 80 Program was implemented in 2008. In 2017, 6 Amendment 80 CPs and one AFA CP operated as motherships in the BSAI TLAS yellowfin sole fishery. However, from 2003 through 2014, no more than two CP vessels participated as motherships in the BSAI TLAS yellowfin sole fishery in any one year (Section 2.7.1.1 of the Analysis). Section 2.7.1.1 of the Analysis notes that much of the increase in participation by CVs is due to an increase in the number of Amendment 80 vessels operating as motherships.

The Council determined, and NMFS agrees, that it is appropriate to review the policies adopted for the BSAI TLAS yellowfin sole directed fishery under the Amendment 80 Program and the fishing operations in that fishery, and take action, if necessary, as fishing patterns change from those observed at the time the Amendment 80 Program was implemented. As a result, the Council concluded, and NMFS agrees, it is necessary to limit access by CVs targeting BSAI TLAS yellowfin sole for delivery to vessels operating as motherships.

*How would the proposed action limit potential adverse impacts in the BSAI TLAS Pacific cod fishery?*

The Council had information on, and heard public testimony about, the potential impacts of this proposed action on the BSAI TLAS Pacific cod fishery. As noted Section 2.7.2.1 of the Analysis, most of the CVs that participate in the BSAI TLAS yellowfin sole directed fishery also participate in the BSAI TLAS Pacific cod fishery, and a CV that would not receive a BSAI TLAS yellowfin sole directed fishery endorsement for its

groundfish LLP license under this proposed rule may enter or increase its participation in the BSAI TLAS Pacific cod fishery. New or increased participation in the BSAI TLAS Pacific cod fishery would only occur if there is a perceived economic benefit to doing so. A spillover effect into the BSAI TLAS Pacific cod fishery may be more likely when there are fewer CVs that have an LLP license with an endorsement to participate in the BSAI TLAS yellowfin sole directed fishery. This proposed action would limit the number of groundfish LLP licenses, and therefore the number of CVs, that could be used to harvest BSAI TLAS yellowfin sole and deliver to a mothership, and any potential spillover effect into the BSAI TLAS Pacific cod fishery would most likely come from vessels that have participated in the BSAI TLAS yellowfin sole directed fishery, but would be excluded under this proposed rule. Under this proposed rule up to eight CVs could participate in the BSAI TLAS yellowfin sole directed fishery. The maximum number of CVs that participated in the fishery from 2008 through 2017 is eleven individual vessels, with a maximum of nine participating in any one year. The proposed rule would allow eight vessels to participate under groundfish LLP licenses endorsed for the fishery. While the remaining three vessels could increase BSAI TLAS Pacific cod fishery participation, they might also decline to participate in that fishery if there is no perceived economic benefit. At this time it is not possible to predict a definitive outcome.

*Does this proposed action constitute a Limited Access Privilege (LAP) Program?*

The Council determined during its February 2017 meeting, and NMFS concurs, that this proposed action does not meet the definition of a LAP Program included in section 303A of the Magnuson-Stevens Act (16 U.S.C. 1853a). Section 3 of the Magnuson-Stevens Act (16 U.S.C. 1802) defines a LAP as a Federal permit issued as part

of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the TAC of the fishery that may be received or held for exclusive use by a person and includes an individual fishing quota but does not include community development quotas.

This proposed action would limit the number of groundfish LLP licenses and therefore the number of CVs that could be used to harvest BSAI TLAS yellowfin sole and deliver that harvest to a mothership, but it would not assign a portion of the BSAI TLAS yellowfin sole TAC for exclusive use by a person. An individual owner of a groundfish LLP license that would receive an endorsement would not be allocated a specific amount of BSAI TLAS yellowfin sole that would be for the owner's exclusive use. All vessels eligible to participate in the offshore BSAI TLAS yellowfin sole directed fishery, both CPs and CVs designated on groundfish LLP licenses with the proposed endorsement, would continue to compete with each other in harvesting the BSAI TLAS yellowfin sole TAC and do not act together as one entity. Additionally, although CVs have not historically delivered their catch of yellowfin sole to shore-based processing plants, this proposed action does not preclude CVs from conducting directed fishing for BSAI TLAS yellowfin sole and delivering that harvest to shore-based processing plants. This proposed action does not limit the amount of BSAI TLAS yellowfin sole that could be harvested by a CV designated on a groundfish LLP license that has a BSAI TLAS yellowfin sole endorsement; rather, it limits the number of CVs that are eligible to participate in the directed fishery and deliver their harvest to a mothership. This proposed action does not limit CPs participating in the BSAI TLAS yellowfin sole fishery or assign a portion of the TAC for exclusive use by CPs. Finally, NMFS will maintain the ability

to reallocate BSAI TLAS yellowfin sole TAC to the Amendment 80 sector if NMFS determines that it will go unharvested.

*How will this action help reduce halibut PSC?*

In fisheries where circumstances motivate fishermen to race against each other to harvest as much fish as they can before the annual catch limit or the PSC limit is reached and the fishery closes for the season, participants can have a substantial disincentive to take actions to reduce bycatch use and waste, particularly if those actions could reduce groundfish catch rates. In a “race for fish,” participants who choose not to take actions to reduce bycatch and waste stand to gain additional groundfish catch by continuing to harvest at a higher bycatch rate, at the expense of any vessels engaged in bycatch avoidance. By limiting CV access to the offshore BSAI TLAS yellowfin sole fishery and reducing pressure to harvest the BSAI TLAS yellowfin sole TAC quickly, this proposed action would help to reduce incentives for a “race for fish” and provide participating CVs more flexibility in fishing operations, allowing them to better avoid halibut PSC.

Additionally, industry participants have testified to the Council that some companies participating in the BSAI TLAS yellowfin sole directed fishery reduce halibut mortality in the fishery through implementing “best practices” agreements designed to reduce halibut mortality. Such testimony indicated that these agreements have included halibut mortality target rates, real-time reporting of locations with high halibut PSC, or informal apportionment of remaining halibut mortality among vessels fishing late in the year. Limiting the number of CVs in this fishery may provide a better opportunity to implement best practices agreements, because participation in the fishery would be more stable and predictable over the long term. That stability and predictability could facilitate

better communication among participants. Section 2.7.1.2 of the Analysis provides additional detail on halibut PSC management practices in the BSAI TLAS yellowfin sole fishery.

Section 3.2.2.1 of the Analysis concluded that this proposed rule would not affect annual halibut PSC limits, but does have the potential to help participants maintain or reduce halibut PSC in the BSAI TLAS yellowfin sole fishery, as described above. While such savings are not guaranteed or predictable due to the suite of variables that can affect halibut PSC and rates in this fishery, the proposed action addresses concerns that increasing entry could make halibut PSC increase, is expected to maintain halibut PSC at current levels, and may even create a management environment in which the participants are able to work together to reduce halibut PSC. Additionally, the Council and NMFS do not expect any negative effects on halibut from this proposed rule because halibut PSC limits for this fishery would continue to be established each year, and the fishery would be closed if NMFS determines that the halibut PSC limit will be reached before the yellowfin sole TAC is reached.

### **Proposed Action**

This proposed rule would implement Amendment 116 to the BSAI FMP. This proposed rule would establish eligibility criteria for, and a process to issue, a new endorsement to groundfish LLP licenses that would authorize vessels designated on those licenses and operating in the BSAI TLAS yellowfin sole directed fishery to deliver BSAI TLAS yellowfin sole catch to a mothership. Regulations at §679.2 define a mothership as a vessel that receives and processes groundfish from other vessels. Under this proposed rule, any vessel that meets the mothership definition at §679.2 or has a mothership

designation on its Federal Fishery Permit, including CPs and stationary floating processors, will be considered a mothership for this action. For purposes of simplicity, this preamble uses the term “BSAI TLAS yellowfin sole directed fishery endorsement” to mean an endorsement on a groundfish LLP license that would allow the vessel designated on that LLP license to deliver its catch of BSAI TLAS yellowfin sole to a mothership for processing.

Under this proposed action, NMFS would issue a BSAI TLAS yellowfin sole directed fishery endorsement to a groundfish LLP license with a Bering Sea trawl endorsement if: 1) the groundfish LLP license is credited with at least one legal trip target landing in the BSAI TLAS yellowfin sole directed fishery, and 2) the credited legal trip target landing was to a mothership in any one year of the qualifying period from 2008 through 2015. If a vessel that made at least one trip target landing in the BSAI TLAS directed fishery during the qualifying period was designated on more than one groundfish LLP license during the qualifying period, the vessel owner would be required to select one groundfish LLP license to receive credit with the qualifying landings made by that vessel during the qualifying period.

Where a vessel that made at least one trip target landing in the BSAI TLAS directed fishery from 2008 through 2015 was designated on more than one groundfish LLP license during the qualifying period, all groundfish LLP licenses on which the vessel was designated when it was used to make a trip target landing in a BSAI TLAS fishery during the qualifying period would be eligible to receive credit with the qualifying landings made by the vessel. However, none of these groundfish LLP licenses would be credited with a qualifying landing and receive an endorsement from NMFS until the



vessel owner notifies NMFS and identifies which single groundfish LLP license is to be credited with the qualifying landing(s).

Based on the information provided in the Analysis and the official record, NMFS has determined that ten groundfish LLP licenses would be eligible to be credited with qualifying landing(s) and receive a BSAI TLAS yellowfin sole directed fishery endorsement. Two were the sole groundfish LLP license on which a vessel that made a qualifying landing during the qualifying period was designated. Therefore, under this proposed rule, those two groundfish LLP licenses would be credited with a qualifying landing and receive a BSAI TLAS directed fishery endorsement. The remaining eight eligible groundfish LLP licenses were each one of two groundfish LLP licenses designated on a vessel that made qualifying landings during the qualifying period; therefore, those eight groundfish LLP licenses would be eligible to be credited with a qualifying landing and receive an endorsement. For any of those eight groundfish LLP licenses to be credited with a qualifying landing and receive an endorsement, the vessel owner would be required to select one groundfish LLP license that NMFS is to credit with all qualifying landings made by that vessel. Up to six of those eight groundfish LLP licenses could be credited with a qualifying landing and receive an endorsement from NMFS. Therefore, NMFS anticipates that a total of eight groundfish LLP licenses could receive a BSAI TLAS yellowfin sole directed fishery endorsement under the proposed rule, resulting in up to eight vessels that could participate in the BSAI TLAS yellowfin sole directed fishery and deliver their catch to a mothership.

This provision would ensure that in cases where a vessel was designated on more than one groundfish LLP license during the qualifying period when one or more

qualifying BSAI TLAS trip target landings were made, only one of those groundfish LLP licenses would be credited with the qualifying landing(s). Because NMFS does not require vessel owners and operators to specify how specific landings should be credited to multiple groundfish LLP licenses on which the same vessel was designated, this provision would resolve any disputes that may arise about the assignment of specific landings by having the vessel owner identify one groundfish LLP license to credit with the qualifying landing(s).

Any vessel designated on a groundfish LLP license with a BSAI TLAS yellowfin sole directed fishery endorsement would be authorized to deliver catch of BSAI TLAS yellowfin sole in the directed fishery to a mothership. This proposed rule would not preclude a vessel with a BSAI TLAS yellowfin sole directed fishery endorsement from delivering catch of yellowfin sole that is harvested in the BSAI TLAS yellowfin sole directed fishery to a shore-based processing plant. This proposed rule also would not preclude a vessel without a BSAI TLAS yellowfin sole directed fishery endorsement from delivering incidental catch of yellowfin sole that is caught while participating in other directed fisheries to a mothership for processing. For example, a vessel without a BSAI yellowfin sole directed fishery endorsement could participate in the BSAI TLAS Pacific cod directed fishery and deliver its directed catch of Pacific cod with its incidental catch of BSAI TLAS yellowfin sole to a mothership, provided that the vessel has met all applicable requirements to participate in the BSAI TLAS Pacific cod directed fishery and the incidental catch of BSAI TLAS yellowfin sole is at or under the maximum retainable amount (MRA) for yellowfin sole. Finally, this proposed action would not preclude a vessel from participating as a CP and processing its own catch in the BSAI TLAS

yellowfin sole directed fishery. Under this proposed rule a vessel that does not have a BSAI Trawl Limited Access Sector yellowfin sole directed fishery endorsement would be prohibited from delivering yellowfin sole harvested with trawl gear in the BSAI Trawl Limited Access Sector yellowfin sole directed fishery to a mothership, as defined at § 679.2. The following sections of this preamble describe how NMFS proposes to determine a trip target landing, credit qualifying landings to a groundfish LLP license, and issue BSAI TLAS yellowfin sole directed fishery endorsements.

#### *Determining and Crediting Trip Target Landings*

NMFS can determine which and how many landings, where landing means offloading fish (50 CFR 679.2), were made by a vessel designated on a specific groundfish LLP license during a particular timeframe. Regulations at 50 CFR 679.4(k) require an LLP license holder to designate a specific vessel on which the license will be used. This requirement allows NMFS to credit landings to a specific LLP license. NMFS also collects vessel landings data, which includes information on the species and amounts landed. From these data, NMFS has created an official record with all relevant information necessary to determine legal trip target landings that can be credited to BSAI groundfish LLP licenses.

The official record created by NMFS contains vessel landings data and the groundfish LLP licenses to which those landings are credited. Evidence of the number and amount of trip target landings of BSAI TLAS yellowfin sole is based on legally submitted NMFS weekly production reports for CPs and State of Alaska fish tickets for CVs. Historically, NMFS has used only these two data sources to determine the specific amount and location of landings, and NMFS proposes to continue to do so under this

action. The official record includes the records of specific groundfish LLP licenses, including vessels designated on them, and other relevant information necessary to credit landings to specific groundfish LLP licenses. NMFS presumes the official record is correct, and a person wishing to challenge the presumptions in the official record would bear the burden of proof through an evidentiary and appeals process.

In order for a groundfish LLP license to receive a BSAI TLAS yellowfin sole directed fishery endorsement and be authorized to conduct directed fishing for BSAI TLAS yellowfin sole and deliver that catch to a mothership, NMFS would first have to determine that the groundfish LLP license is an eligible license and then would have to determine that the eligible license can be credited with one or more qualifying landings. Under this proposed rule, NMFS would identify as eligible those groundfish LLP licenses with a Bering Sea trawl endorsement and those vessels using trawl gear operating under the authority of that groundfish LLP license when 1) the vessel was used to make a trip target landing in the BSAI TLAS yellowfin sole directed fishery during any year from 2008 through 2015 and 2) the catch from that trip target landing of BSAI TLAS yellowfin sole was delivered to a mothership for processing.

Based on the official record, NMFS has identified ten groundfish LLP licenses that would be eligible to be credited with qualifying landings. Two of these eligible groundfish LLP licenses were the sole groundfish LLP license on which a given vessel was designated at the time the vessel made qualifying landings of BSAI TLAS yellowfin sole. Therefore, NMFS would credit these two groundfish LLP licenses with the qualifying landings under this proposed rule. NMFS proposes to list these two groundfish LLP licenses in Table 52 to part 679. The remaining eight eligible groundfish

LLP licenses were not the sole groundfish LLP license on which a given vessel was designated at the time the vessel made at least one trip target in the BSAI TLAS fishery during the qualifying period. Because this proposed rule would require in such cases that the vessel owner specify one groundfish LLP license to receive credit with the qualified landing(s) made by that vessel, NMFS would not be able to credit these groundfish LLP licenses until NMFS receives notification from the vessel owner which groundfish LLP license should be credited with the qualifying landing(s). NMFS proposes to list in Table 53 to part 679 the eight groundfish LLP licenses that would be eligible for, but would not be credited with, qualifying landings until notification from the vessel owner is received by NMFS. The proposed notification process is described in the following section.

The groundfish LLP licenses identified in proposed Tables 52 and 53 to 50 CFR Part 679 represent the groundfish LLP licenses that NMFS has determined would be eligible for an endorsement at this time. Additional groundfish LLP licenses may qualify for an endorsement through the proposed administrative adjudicative process described below. NMFS is proposing to list the groundfish LLP licenses it has determined are eligible to receive the BSAI TLAS yellowfin sole directed fishery endorsement to help facilitate the ability of the public to review their catch records and determine if additional groundfish LLP licenses may be eligible to receive the endorsement. NMFS specifically requests public comment on the groundfish LLP licenses listed in proposed Tables 52 and 53 to part 679.

If a holder of a groundfish LLP license believes the groundfish LLP license would meet the eligibility criteria, but the license is not listed in proposed Tables 52 or 53 to part 679, or if a license holder disagrees with the groundfish LLP license to which NMFS

would assign the BSAI TLAS yellowfin sole directed fishery endorsement, the holder would have the opportunity to challenge NMFS' determination as described in the following section of the preamble.

*Proposed Process for Issuing BSAI TLAS Yellowfin Sole Directed Fishery Endorsements*

NMFS has determined the groundfish LLP licenses identified in proposed Table 52 can be credited with qualifying landings based on the official record and would receive a BSAI TLAS yellowfin sole endorsement under Amendment 116 and this proposed rule. If Amendment 116 is approved and this proposed rule is finalized, NMFS would issue a notification of eligibility and a revised groundfish LLP license with a BSAI TLAS yellowfin sole directed fishery endorsement to the holders of the groundfish LLP licenses identified in proposed Table 52, using the address on record at the time the notification is sent.

NMFS has determined the groundfish LLP licenses identified in proposed Table 53 are eligible to be credited with qualifying landings based on the official record. However, the vessels that made qualifying landings while designated on these groundfish LLP licenses were designated on more than one groundfish LLP license during the qualifying period. Therefore, none of the groundfish LLP licenses in proposed Table 53 can be credited with qualifying landings until the owner of the vessel designated on those groundfish LLP licenses identifies which groundfish LLP license is to be credited with the qualifying landings. Under this proposed rule, NMFS would mail the vessel owner a notification of eligibility for those groundfish LLP licenses, using the address on record at the time the notification is sent. The notice would ask the vessel owner to submit to NMFS a written request to credit the qualifying landings, in accordance with proposed

regulations at §679.4(k)(14)(v)(F), to one groundfish LLP license selected by the vessel owner from the list of eligible groundfish LLP licenses provided by NMFS in the notice. NMFS would also send a notification of eligibility to the holders of each of those groundfish LLP licenses identified in proposed Table 53 using the address on record at the time the notification is sent. NMFS would issue a revised groundfish LLP license with a BSAI TLAS yellowfin sole directed fishery endorsement to the holder of the groundfish LLP license selected by the vessel owner in the written request to NMFS. NMFS would also send a notification to the holder of the groundfish LLP license not selected by the vessel owner to be credited with qualifying landings, using the address on record at the time the notification is sent, informing the holder that the groundfish LLP license was not credited with a qualifying landing and would not receive a BSAI TLAS yellowfin sole endorsement. NMFS would provide a single, 30-day evidentiary period from the date that notification is sent for a groundfish LLP license holder to submit any information or evidence to demonstrate that the information contained in the official record is inconsistent with the holder's records.

For all those groundfish LLP licenses with a Bering Sea trawl designation, but not listed in either proposed Table 52 or 53, NMFS would notify the holders that the groundfish LLP license is not eligible for a BSAI TLAS yellowfin sole directed fishery endorsement based on the official record, using the address on record at the time the notification is sent. NMFS would provide the holder with an opportunity to submit information to NMFS to rebut the official record. NMFS would provide a single, 30-day evidentiary period from the date that notification is sent for a groundfish LLP license holder to submit any information or evidence to demonstrate that the information

contained in the official record is inconsistent with the holder's records.

Under this proposed rule, a groundfish LLP license holder who submits claims that are inconsistent with information in the official record would have the burden of proving that the submitted claims are correct. NMFS would not accept claims that are inconsistent with the official record, unless they are supported by clear, written documentation. NMFS would evaluate all additional information or evidence submitted within the 30-day evidentiary period. If NMFS determines that the additional information or evidence proves that the groundfish LLP license holder's claims are correct, NMFS would amend the official record in accordance with that information or evidence. However, if, after the 30-day evidentiary period, NMFS determines that the additional information or evidence does not prove that the groundfish LLP license holder's claims were correct, NMFS would deny the claim. NMFS would notify the applicant that the additional information or evidence did not meet the burden of proof to overcome the official record through an initial administrative determination (IAD).

NMFS' IAD would indicate the deficiencies and discrepancies in the information or evidence submitted in support of the claim. NMFS' IAD would indicate which claims could not be approved based on the available information or evidence, and provide information on how an applicant could appeal an IAD. The former procedure for appealing an IAD to the NMFS' Alaska Office of Administrative Appeals was described at § 679.43. However, NMFS has centralized the appeals process in the National Appeals Office, which operates out of NMFS' headquarters in Silver Spring, MD. The National Appeals Office is now charged with processing appeals that were filed with the Office of Administrative Appeals, Alaska Region. The procedure for appealing an IAD through the



National Appeals Office is at 15 CFR part 906 (79 FR 7056, February 6, 2014). During the pendency of an administrative adjudication leading to a final agency action, NMFS would issue an interim (temporary, non-transferable) license to an applicant who was authorized to participate in the fishery in the year before the IAD is issued and who makes a credible claim to eligibility for a BSAI TLAS yellowfin sole fishery endorsement. An applicant who was issued a license the previous year would be eligible for a non-transferable interim license pending the resolution of his or her claim pursuant to the license renewal provisions of 5 U.S.C. 558. The non-transferable, interim license would authorize the applicant to deliver BSAI TLAS yellowfin sole to a mothership for processing and would be effective until final agency action on the appeal. At that time, the person who appealed would receive either a transferable license with the endorsement or a transferrable license without the endorsement, depending on the final agency action.

The following provides a brief summary of the regulatory changes that would be made by this proposed rule.

This proposed rule would add § 679.4(k)(14) to include the provisions that are necessary to qualify for, and receive, a BSAI TLAS yellowfin sole directed fishery endorsement.

This proposed rule would add § 679.7(i)(11) to prohibit the delivery of yellowfin sole harvested with trawl gear in the BSAI TLAS directed fishery to a mothership without a copy of a valid LLP with a BSAI TLAS yellowfin sole directed fishery endorsement except as provided in § 679.4(k)(2). Section 679.4(k)(2) lists the specific conditions under which vessels are not required to be designated on LLP licenses to harvest groundfish. None of the vessels currently exempted from the requirements to be

designated on an LLP license under § 679.4(k)(2) participate in the BSAI TLAS yellowfin sole directed fishery.

This proposed rule would add Table 52 to part 679 to list those groundfish LLP licenses that NMFS has determined would be eligible, would be credited with qualifying landings, and would receive a BSAI TLAS yellowfin sole directed fishery endorsement under this proposed rule.

This proposed rule would also add Table 53 to part 679. Table 53 would list those pairs of groundfish LLP licenses that NMFS has determined would be eligible to be credited with qualifying landings, such that each pair was designated on the same vessel that made the qualifying landings. Because only one groundfish LLP license could be credited with the qualifying landings, the owner of the vessel designated on the pair of groundfish LLP licenses would notify NMFS which one groundfish LLP license of the pair should be credited with the qualifying landings. Upon receipt of the written notification from the vessel owner, NMFS would credit the qualifying landings to the one groundfish LLP license of the pair selected by the vessel owner and issue it a BSAI TLAS yellowfin sole directed fishery endorsement.

### **Classification**

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 116, the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of

Executive Order 12866.

*Regulatory Impact Review (RIR)*

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended Amendment 116 based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

*Initial Regulatory Flexibility Analysis (IRFA)*

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting and recordkeeping requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of the proposed action, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

Number and Description of Small Entities Regulated by this Proposed Action

The directly regulated entities under this proposed rule are 1) holders of groundfish LLP licenses that authorize a vessel designated on the LLP license to harvest groundfish using trawl gear in the Bering Sea and 2) vessel owners that must choose one of two LLP licenses on which the vessel was designated during the qualifying period.

Based on the best available and most recent complete data from 2008 through 2017, 163 groundfish LLP license holders and five vessel owners would be directly regulated by this proposed action.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The RFA requires consideration of affiliations between entities for the purpose of assessing whether an entity is classified as small. The AFA pollock and Amendment 80 cooperatives are types of affiliation between entities. All of the AFA and Amendment 80 cooperatives have gross annual revenues that are substantially greater than \$11 million. Therefore, NMFS considers members in these cooperatives “affiliated” large (non-small) entities for RFA purposes.

Of the 163 groundfish LLP license holders directly regulated by the proposed action, 128 were members of an AFA cooperative and 26 were members of an Amendment 80 cooperative in 2017. Therefore, NMFS considers those 154 groundfish LLP license holders to be “affiliated” large (non-small) entities for RFA purposes. All of the groundfish LLP licenses with designated vessels that participated in the BSAI TLAS yellowfin sole directed fishery and delivered catch to a mothership from 2008 through 2017 were affiliated with either an AFA or an Amendment 80 cooperative in 2017. NMFS therefore considers these LLP license holders to be “affiliated” large (non-small)

entities for RFA purposes. The remaining nine groundfish LLP license holders are not affiliated with AFA or Amendment 80 cooperatives and are assumed to be small entities directly regulated by this action for purposes of the RFA. All five vessel owners who are considered regulated entities under this proposed rule were affiliated with either an AFA pollock or an Amendment 80 cooperative in 2017. Therefore, NMFS considers them “affiliated” large (non-small) entities for RFA purposes. This IRFA assumes that each vessel owner and each groundfish LLP license holder is a unique entity; therefore, the total number of directly regulated entities may be an overestimate because some vessel owners and groundfish LLP license holders are likely affiliated through common ownership. These potential affiliations are not known with the best available data and cannot be predicted.

#### Impacts of this Action on Small Entities

Under this proposed rule, access to the BSAI TLAS yellowfin sole directed fishery by vessels that deliver their BSAI TLAS yellowfin sole directed fishery catch to a mothership for processing would be limited to only those vessels designated on a groundfish LLP license with a BSAI TLAS yellowfin sole directed fishery endorsement. However, no small entities would qualify to hold a groundfish LLP license with such an endorsement. None of the nine LLP license holders who are considered small entities regulated under this proposed rule are expected to be adversely impacted by this proposed rule. Based on a review of fishery data from 2008 through 2017, none of those nine groundfish LLP licenses had designated on it a vessel that delivered BSAI TLAS yellowfin sole directed fishery catch to a mothership for processing. This proposed rule would not limit existing delivery patterns by vessels designated on those nine LLP

licenses. This proposed rule would limit the future opportunity for the holders of these nine LLP licenses to deliver BSAI TLAS yellowfin sole directed fishery catch to a mothership for processing. The lack of any quantitative data on potential future delivery patterns makes it impossible to rigorously assess the expected economic impact of limiting these nine LLP license holders from future deliveries of BSAI TLAS yellowfin sole directed fishery catch to a mothership for processing.

#### Description of Significant Alternatives Considered

The RFA requires identification of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. The Council considered a status quo alternative and one action alternative with several options and suboptions. The combination of options and suboptions under the action alternative provided a reasonable range of potential alternative approaches to status quo management.

Under the status quo, there would be a risk of continued increasing harvest effort resulting in shorter fishing seasons and higher halibut PSC rates. The action alternative would accomplish the stated objectives of prioritizing a portion of the BSAI TLAS yellowfin sole TAC for harvest by historic participants that deliver their catch to motherships for processing and maintaining a steady fishing pace and season duration, while minimizing adverse economic impacts on small entities and the potential for increasing harvest effort that shortens fishing seasons and increases Pacific halibut PSC rates. The action alternative does not affect any sector's BSAI TLAS yellowfin sole allocation or the BSAI TLAS yellowfin sole TAC.

The Council considered a range of dates, varying levels of participation, and a suite of mechanisms to provide greater harvesting and processing opportunities for CVs to deliver to offshore processors during periods of high BSAI yellowfin sole TAC. The Council recommended the proposed combination of dates and participation level to relieve the recent increase in harvest pressure and rate and give historic fishery participants sufficient opportunity to harvest and deliver BSAI TLAS yellowfin sole to motherships without increasing the risk of shorter fishing seasons and higher Pacific halibut PSC rates.

The Council and NMFS considered two alternatives. Alternative 1, the no action alternative, would not limit access by catcher vessels to the offshore BSAI TLAS yellowfin sole directed fishery. Alternative 2 would limit access by CVs to the offshore BSAI TLAS yellowfin sole directed fishery.

Under Alternative 2, two options with four and eight suboptions, respectively, were considered. The suboptions under Option 1 would limit access to the fishery to CVs with qualifying deliveries to a mothership from 2008 through 2015 in either any one or any two years or from 2008 through 2016 in either any one or any two years. Suboptions under Option 2.1 would allow all CVs with BSAI trawl endorsements access to the fishery when the TAC assigned to the BSAI TLAS is equal to or greater than an amount in a range of suboptions from 15,000 mt through 30,000 mt. Suboptions under Option 2.2 would limit access to the fishery by CVs that do not meet landings qualifications under Option 1 to a portion of the BSAI TLAS yellowfin sole TAC equal to or greater than an amount in a range of suboptions from 15,000 mt through 30,000 mt. The combination of options and suboptions under Alternative 2 provided the Council and NMFS with a broad

range of alternative policy considerations relative to the no action alternative (Alternative 1). The proposed rule incorporates the preferred option and suboption under Alternative 2 which would limit access to the fishery to CVs with qualifying deliveries to a mothership from 2008 through 2015 in any one year, because that combination would best prevent increased catcher vessel participation from reducing the benefits the fishery provides to historic and recent participants, mitigate the risk that a “race for fish” could develop, and help to maintain the consistently low rates of halibut bycatch in the BSAI TLAS yellowfin sole directed fishery.

#### Federal Rules that May Duplicate, Overlapping, or Conflict with the Proposed Action

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

#### Projected Recordkeeping and Reporting Requirements

This proposed rule does not add additional reporting or recordkeeping requirements for the vessels that choose to submit an appeal. An appeal process exists for LLP license endorsement issuance. No small entity is subject to reporting requirements that are in addition to or different from the requirements that apply to all directly regulated entities. No unique professional skills are needed for the LLP license or vessel owners or operators to comply with the reporting and recordkeeping requirements associated with this proposed rule. This proposed rule would not implement or increase any fees that NMFS collects from directly regulated entities. The Analysis prepared for this action identifies no operational costs of the endorsement (see **ADDRESSES**).

#### *Collection-of-Information Requirements*

This proposed rule contains collection-of-information requirements subject to



review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. These requirements have been submitted to OMB for approval under a temporary new information collection, to be merged after approval with OMB Control Number 0648-0334. The public reporting burden for the collection-of-information requirements in this proposed rule is estimated to average two hours per response for a one-time Election to Assign Qualifying Landings to an LLP license and 4 hours per response to submit an appeal, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding 1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2) the accuracy of the burden estimate; 3) ways to enhance the quality, utility, and clarity of the information to be collected; and 4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, and by e-mail to *OIRA\_Submission@omb.eop.gov* or fax to (202) 395-5806.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at

[http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements

Dated: May 31, 2018.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

**PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF  
ALASKA**

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447;  
Pub. L. 111-281.

2. In § 679.4, add paragraph (k)(14) to read as follows:

**§ 679.4 Permits.**

\* \* \* \* \*

(k) \* \* \*

(14) *Yellowfin sole trawl limited access sector (TLAS) directed fishery*

*endorsement in the BSAI—(i) General.* In addition to other requirements of this part, and unless specifically exempted in paragraph (k)(2) of this section, a vessel must be designated on a groundfish LLP license that has a BSAI TLAS yellowfin sole directed fishery endorsement in order to conduct directed fishing for yellowfin sole with trawl gear in the BSAI Trawl Limited Access Sector fishery and deliver the catch to a mothership as defined at § 679.2. A vessel designated on a groundfish LLP license with trawl and catcher/processor vessel designations and a BSAI TLAS yellowfin sole directed fishery endorsement may operate as a catcher vessel and deliver its catch of yellowfin sole harvested in the directed BSAI TLAS fishery to a mothership, or operate as a catcher/processor and catch and process its own catch in this fishery.

(ii) *Eligibility requirements for a BSAI TLAS yellowfin sole directed fishery endorsement.*

(A) A groundfish LLP license is eligible to receive a BSAI TLAS yellowfin sole directed fishery endorsement if the groundfish LLP license:

(1) Had a vessel designated on it, in any year from 2008 through 2015, that made at least one legal trip target landing of yellowfin sole in the BSAI TLAS directed fishery to a mothership as defined at § 679.2 in any one year from 2008 through 2015, inclusive, where a trip target is the groundfish species for which the retained amount of that groundfish species is greater than the retained amount of any other groundfish species for that trip;

(2) Has a Bering Sea area endorsement and a trawl gear designation; and

(3) Is credited by NMFS with a legal trip target landing specified in paragraph

(k)(14)(ii)(A)(I) of this section.

(B) If a vessel specified in paragraph (k)(14)(ii)(A)(I) of this section was designated on more than one groundfish LLP license from 2008 through 2015 and made at least one legal trip target landing in a BSAI TLAS directed fishery from 2008 through 2015, the vessel owner must specify to NMFS only one of those groundfish LLP licenses to receive credit with the legal trip target landing(s) specified in paragraph (k)(14)(ii)(A)(I) of this section.

(iii) *Explanations for BSAI TLAS yellowfin sole directed fishery endorsement.*

(A) NMFS will determine whether a groundfish LLP license is eligible to receive a BSAI TLAS yellowfin sole directed fishery endorsement under paragraph (k)(14)(ii) of this section based only on information contained in the official record described in paragraph (k)(14)(v) of this section.

(B) NMFS will credit a groundfish LLP license with a legal trip target landing specified in paragraph (k)(14)(ii)(A)(I) of this section if that groundfish LLP license was the only groundfish LLP license on which the vessel was designated from 2008 through 2015. If a vessel that made at least one legal trip target landing specified in paragraph (k)(14)(ii)(A)(I) of this section was designated on more than one groundfish LLP license from 2008 through 2015 and made at least one legal trip target landing in a BSAI TLAS directed fishery from 2008 through 2015, the vessel owner must notify NMFS which one of those groundfish LLP licenses NMFS is to credit with the legal trip target landing(s) specified in paragraph (k)(14)(ii)(A)(I) of this section.

(C) Trip target landings will be determined based on round weight equivalents.

(iv) *Exemptions to BSAI TLAS yellowfin sole endorsements.* Any vessel exempted from the License Limitation Program at paragraph (k)(2) of this section is exempted from the requirement to have a BSAI TLAS yellowfin sole endorsement to deliver catch of BSAI TLAS yellowfin sole to a mothership for processing.

(v) *BSAI TLAS yellowfin sole participation official record.*

(A) The official record will contain all information used by the Regional Administrator that is necessary to administer the requirements described in paragraph (k)(14) of this section.

(B) The official record is presumed to be correct. A groundfish LLP license holder has the burden to prove otherwise.

(C) Only legal landings as defined in § 679.2 and documented on State of Alaska fish tickets or NMFS weekly production reports will be used to determine legal trip target landings under paragraph (k)(14)(ii)(A)(I) of this section.

(vi) *Process for issuing BSAI TLAS yellowfin sole endorsements.*

(A) NMFS will issue to the holder of each groundfish LLP license endorsed to use trawl gear in the Bering Sea and designated in Column A of Table 52 to this part a notice of eligibility to receive a BSAI TLAS yellowfin sole directed fishery endorsement and a revised groundfish LLP license with a BSAI TLAS yellowfin sole directed fishery endorsement.

(B) NMFS will issue to the holder of each groundfish LLP license endorsed to use trawl gear in the Bering Sea and designated in Column A of Table 53 to this part a notice of eligibility to be credited with a legal trip target landing specified in (k)(14)(ii)(A)(I) of this section.

(1) NMFS will also issue to the owner of the vessel designated on the groundfish LLP licenses in Column A of Table 53 a notice of eligibility for the two listed groundfish LLP licenses to be credited with a legal trip target landing specified in (k)(14)(ii)(A)(1) of this section. The notice to the vessel owner will provide instructions for the vessel owner to select the one groundfish LLP license that NMFS is to credit with the legal trip target landing specified in (k)(14)(ii)(A)(1) of this section.

(2) The holder of a groundfish LLP license in Column A of Table 53 will receive a revised groundfish LLP license with a BSAI TLAS yellowfin sole directed fishery endorsement if:

(i) The owner of the vessel designated on the groundfish LLP license requests in writing that NMFS credit that groundfish LLP license with the legal trip target landing specified in paragraph (k)(14)(ii)(A)(1) of this section;

(ii) The vessel owner, or the authorized agent, signs the request;

(iii) The written request is submitted to NMFS using one of the following methods: Mail at Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; fax at 907-586-7352; or hand delivery or carrier at NMFS, Room 713, 709 West 9<sup>th</sup> Street, Juneau, AK 99801.

(iv) NMFS receives the written request and credits the groundfish LLP license with the legal trip target landing specified in paragraph (k)(14)(ii)(A)(1) of this section; and

(3) The holder of a groundfish LLP license in Column A of Table 53 that is not selected by the vessel owner will receive a notice, using the address on record at the time the notification is sent, informing the holder that the groundfish LLP license was not

selected by the vessel owner, will not be credited with a legal trip target landing, and will not receive a BSAI TLAS yellowfin sole endorsement. The notice will inform the holder of the groundfish LLP license of the timing and process through which the holder can provide additional information or evidence to amend or challenge the information in the official record of this section as specified in paragraphs (k)(14)(ii)(D) and (E) of this section.

(C) NMFS will issue to the holder of a groundfish LLP license with a Bering Sea trawl designation and that is not listed in either proposed Table 52 or 53 a notice informing that holder that the groundfish LLP license is not eligible to be credited with a legal trip target landing or receive a BSAI TLAS yellowfin sole directed fishery endorsement based on the official record, using the address on record at the time the notification is sent. The notice specified in paragraph (k)(14)(ii)(C) will inform the holder of the groundfish LLP license of the timing and process through which the holder can provide additional information or evidence to amend or challenge the information in the official record of this section, as specified in paragraphs (k)(14)(ii)(D) and (E) of this section.

(D) The Regional Administrator will specify by letter a 30-day evidentiary period during which an applicant may provide additional information or evidence to amend or challenge the information in the official record. A person will be limited to one 30-day evidentiary period. Additional information or evidence received after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination (IAD).

(E) The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period, if the Regional Administrator

determines that the information or evidence provided by the person fails to support the person's claims and is insufficient to rebut the presumption that the official record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies with the information or evidence submitted. The IAD will also indicate which claims cannot be approved based on the available information or evidence. A person who receives an IAD may appeal pursuant to 15 CFR part 906. NMFS will issue a non-transferable interim license that is effective until final agency action on the IAD to an applicant who avails himself or herself of the opportunity to appeal an IAD and who has a credible claim to eligibility for a BSAI TLAS yellowfin sole endorsement.

\* \* \* \* \*

3. In § 679.7, add paragraph (i)(11) to read as follows;

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(i) \* \* \*

(11) *Prohibitions specific to the BSAI Trawl Limited Access Sector yellowfin sole directed fishery.* Deliver yellowfin sole harvested with trawl gear in the BSAI Trawl Limited Access Sector yellowfin sole directed fishery to a mothership as defined at § 679.2 without a legible copy of a valid groundfish LLP license with a BSAI Trawl Limited Access Sector yellowfin sole directed fishery endorsement, except as provided in § 679.4(k)(2).

\* \* \* \* \*



4. Add Table 52 to part 679 to read as follows:

**Table 52 to Part 679—Groundfish LLP Licenses Eligible for a BSAI Trawl Limited Access Sector Yellowfin Sole Directed Fishery Endorsement. [X indicates that Column A applies]**

Column A	Column B
The Holder of Groundfish License Number . . .	Is eligible under 50 CFR 679.4(k)(14)(ii) to be assigned an Endorsement for the BSAI Trawl Limited Access Sector Yellowfin Sole Fishery.
LLG 3944	X
LLG 2913	X

5. Add Table 53 to part 679 to read as follows:

**Table 53 to Part 679—Groundfish LLP Licenses that Require Qualified Landings Assignment to be Eligible for a BSAI Trawl Limited Access Sector Yellowfin Sole Directed Fishery Endorsement. [X indicates that Column A applies]**

Column A	Column B
A single vessel was designated on the following pairs of groundfish LLP licenses during the qualifying period identified in 50 CFR 679.4(k)(14)(ii)(A)(I)...	The owner of the vessel designated on the pair of LLP licenses in Column A must notify NMFS which LLP license from each pair in Column A is to be credited with qualifying landing(s) under 50 CFR 679.4 (k)(14)(vi)(2).
LLG 3838 and LLG 2702	X
LLG 3902 and LLG 3826	X
LLG 3714 and LLG 1667	X
LLG 1820 and LLG 3741	X
LLG 3741 and LLG 3714	X

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